



**Terri Kondeff**  
**Director**

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators LODGE, Guthrie, Stennett and,  
Representatives CRANE, Armstrong, Gannon

**FROM:** Ryan Bush - Principal Legislative Drafting Attorney

**DATE:** August 04, 2021

**SUBJECT:** Temporary Rule

IDAPA 32.01.01 - Notice of Omnibus Rulemaking (Fee Rule) - Adoption of Temporary Rule \ Rescission of Previous Temporary Rule - Docket No. 32-0101-2100F

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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## IDAPA 32 – ENDOWMENT FUND INVESTMENT BOARD

DOCKET NO. 32-0101-2100F (FEE RULE)

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE \ RESCISSION OF PREVIOUS TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021. The rescission of previous temporary rule under docket 32-0101-2000F is effective July 1, 2021.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule and rescinded a previous temporary rule. The action is authorized pursuant to Section 57-728(2), Idaho Code, which gives the Endowment Fund Investment Board authority to promulgate rules necessary to discharge EFIB's duties for the administration of the Credit Enhancement Program.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and rescinding a previous temporary rule:

This temporary rulemaking adopts and republishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 32, rules of the Endowment Fund Investment Board:

#### **IDAPA 32**

- 32.01.01, *Rules Governing the Credit Enhancement Program for School Districts.*

2010 Idaho Attorney General Opinion 01 concludes that EFIB must charge fees to offset the cost of the Credit Enhancement Program to the Endowments. Rescission of the previous temporary rule aligns this chapter wholly with the administrative code effective 7-1-21.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a-c) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fees or charges being imposed or increased are justified and necessary to avoid immediate danger and the fees are described herein:

The fees or charges, authorized in Section 57-728, Idaho Code, are part of the agency's 2022 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The following is a specific description of the fees or charges:

This rule indicates that the Endowment Fund Investment Board will charge school districts an application fee of \$500 and a one-time bond guarantee fee equal to two one hundredths of one percent (0.02% or two basis points) of the Total Debt Service in order to provide credit enhancement for bonds issued to construct public schools.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the adoption of temporary rule and rescission of temporary rule, contact Chris Anton, Manager of Investments, Endowment Fund Investment Board, 816 West Bannock Street, Suite 301, Boise, ID 83702, (208)334-3312.

DATED this 1st day of July, 2021.

Chris Anton, Manager of Investments  
Endowment Fund Investment Board  
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## IDAPA 32 – ENDOWMENT FUND INVESTMENT BOARD

### 32.01.01 – RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

#### 000. LEGAL AUTHORITY.

Section 57-728(2), Idaho Code, gives the Endowment Fund Investment Board authority to promulgate rules necessary to the discharge of the EFIB's duties for the administration of the Credit Enhancement Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Credit Enhancement Program to the Endowments. (7-1-21)T

#### 001. SCOPE.

These rules contain the provisions for implementation of the Credit Enhancement Program. (7-1-21)T

#### 002. -- 009. (RESERVED)

#### 010. DEFINITIONS AND REFERENCES.

**01. Administrative Fees.** Application Fees and Pass-through Fees charged to School Districts applying for and receiving guarantees under the Credit Enhancement Program. (7-1-21)T

**02. Application Fee.** The amount determined by the EFIB and set forth in this chapter as the cost of reviewing applications to the Credit Enhancement Program and administering the Credit Enhancement Program. (7-1-21)T

**03. Credit Enhancement Program.** The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. (7-1-21)T

**04. EFIB.** Endowment Fund Investment Board. (7-1-21)T

**05. Endowments.** The trusts granted to the state of Idaho by the Idaho Admission Bill, 26 Statutory Laws 215, chapter 656 as amended. The Endowments include the Public School Endowment established by Idaho Admission Bill sections 4 and 13. (7-1-21)T

**06. Guarantee Fee.** The amount determined by the EFIB and set forth in this chapter as the cost of guaranteeing a school bond under the Credit Enhancement Program. The cost of guaranteeing a school bond includes the difference in the investment return to the Public School Endowment projected by the EFIB to arise from the guarantee and additional costs to the Endowments arising from investment of the Public School Endowment in the Credit Enhancement Program. (7-1-21)T

**07. Guaranty Program.** The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. (7-1-21)T

**08. Pass-Through Fee.** A direct cost to the EFIB for reviewing an application to the Credit Enhancement Program or for issuing a note to pay a debt service payment under the Credit Enhancement Program. Direct costs include the costs billed to the EFIB by legal, accounting, and financial professionals. (7-1-21)T

**09. School District.** As defined in Section 33-5302, Idaho Code. (7-1-21)T

**10. Total Debt Service.** The total amount to be repaid to bond purchasers over the stated maturity of the School District bond (principal plus interest). (7-1-21)T

#### 011. -- 019. (RESERVED)

#### 020. APPLICATION.

**01. Required Materials.** School Districts must submit the following application materials to the EFIB: (7-1-21)T

**a.** Correspondence from the Idaho State Treasurer certifying that the School District has been approved to participate in the Guaranty Program and setting forth the maximum credit enhancement amount available to the School District within the limitations set forth in Section 57-728(8), Idaho Code. (7-1-21)T

**b.** A fully completed application form as prescribed by the EFIB from time to time executed by a party authorized to bind the School District. (7-1-21)T

**c.** Copies of the complete audited financial statements of the School District prepared pursuant to Section 33-701, Idaho Code, for the preceding three (3) fiscal years and the adopted budget for the current fiscal year. (7-1-21)T

**d.** Upon request of the EFIB, documentation substantiating the information set forth in materials submitted pursuant to Subsection 020.01 of these rules. (7-1-21)T

**021. -- 029. (RESERVED)**

**030. FEES.**

**01. Guarantee Fee.** School Districts must remit to the EFIB a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. School Districts must remit the Guarantee Fee to the EFIB within five (5) days of the sale of bonds guaranteed by the Credit Enhancement Program. The EFIB will deposit the Guarantee Fee in the Public School Endowment. (7-1-21)T

**02. Administrative Fees. (7-1-21)T**

**a.** Application Fee. School Districts shall submit to the EFIB an Application Fee of five hundred dollars (\$500). School Districts shall submit the Application Fee to the EFIB with the application materials. The EFIB will use Application Fees to pay costs of reviewing applications and administering the Credit Enhancement Program. At the conclusion of each fiscal year, the EFIB will deposit unexpended Application Fees in the Public School Endowment. (7-1-21)T

**b.** Pass-through Fee. The EFIB may incur a Pass-through Fee related to the review of an application in its discretion. The EFIB will not invoice a School District for Pass-through Fees related to the review of an application without the prior written approval of the School District. The EFIB may incur a Pass-through Fee related to the issuance of a note without prior approval of the School District. The EFIB will invoice School Districts for the full amount of any Pass-through Fees related to the issuance of a note. School Districts shall remit each invoiced Pass-through Fee to the EFIB within thirty (30) days of invoice. The EFIB will use a Pass-through Fee to pay the direct costs to the EFIB under the Credit Enhancement Program giving rise to the fee. (7-1-21)T

**031. -- 039. (RESERVED)**

**040. APPROVAL AND DENIAL OF APPLICATIONS.**

**01. Review Periods.** The EFIB will provide written approval or denial of an application within twenty (20) days of the submission of all required materials. If the Board requests substantiating documentation, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating documentation. (7-1-21)T

**02. Delegation of Review and Approval.** The EFIB may delegate review of applications to EFIB staff or experts including legal, accounting, and financial professionals. The EFIB may delegate approval of applications to the EFIB's manager of investments. (7-1-21)T

**03. Discretionary Investment.** The EFIB will invest in a School District bond issuance under the Credit Enhancement Program in its sole discretion and within its fiduciary responsibilities as trustees of the financial assets of the Endowments. The EFIB may deny an application for participation in the Credit Enhancement Program if the EFIB determines the investment is not in the best interests of one (1) or more of the Endowments. (7-1-21)T

**04. Denial of Application for Unpaid Fees.** The EFIB may deny an application for participation in the Credit Enhancement Program if a School District has not paid a fee under a pending application or a prior guarantee issued by the Credit Enhancement Program. (7-1-21)T

**041. -- 999. (RESERVED)**